

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOHN WILEY & SONS, INC.,
CENGAGE LEARNING, INC., and
PEARSON EDUCATION, INC.,

Plaintiffs,

v.

BOOK DOG BOOKS, LLC and
PHILIP SMYRES,

Defendants.

Case No. 1:13-cv-00816 (WHP) (GWG)

Judge William H. Pauley III

Magistrate Judge Gabriel W. Gorenstein

**SUPPLEMENTAL DECLARATION OF MATTHEW J. OPPENHEIM
IN SUPPORT OF MOTION FOR DISQUALIFICATION OF NEIL B. MOONEY**

I, Matthew J. Oppenheim, hereby declare under penalty of perjury that the following statements are true and correct to the best of my personal knowledge and belief:

1. I am a member of this bar and a partner of Oppenheim + Zebrak, LLP. I am counsel of record in this case for Plaintiffs Cengage Learning, Inc., Pearson Education, Inc., and John Wiley & Sons, Inc. (“Plaintiffs”), and I submit this Declaration in supplemental support of Plaintiffs’ Motion for Disqualification of Neil B. Mooney.

2. After Defendants Book Dog Books, LLC and Philip Smyres (“Defendants”) filed their Opposition to Plaintiffs’ Motion, I contacted Mr. Mooney by email on April 11, 2015 and telephone on April 14, 2015 to ask, for the second time, whether he would stipulate not to appear as trial counsel. As part of my proposal to resolve this matter, I offered to draft a joint letter to the Court indicating that Mr. Mooney would not serve as trial counsel, Plaintiffs would not object to his sitting at counsel table, and if the Court agreed with this resolution, Plaintiffs would

withdraw their Motion. Mr. Mooney liked the idea but said that he needed to consult with his co-counsel.

3. On April 15, 2015, I received an email from defense counsel Tiffany Miller stating that Mr. Mooney would not enter into such a stipulation. Specifically, she stated, “There is no good reason why he should stipulate anything regarding his counsel status.” Attached hereto as Exhibit 1 is a true and correct copy of this email.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Matthew J. Oppenheim

Matthew J. Oppenheim

Executed April 16, 2015
in Washington, DC